

DOCKET NO: HHB-CV-20-6062369-S

SARAH BRAASCH,	:	SUPERIOR COURT, J.D. OF NEW
	:	BRITAIN
VS.	:	
	:	AT NEW BRITAIN
FREEDOM OF INFORMATION	:	
COMMISSION; ASSISTANT CHIEF, YALE	:	SEPTEMBER 19, 2021
UNIVERSITY POLICE DEPARTMENT; and	:	
YALE UNIVERSITY POLICE	:	
DEPARTMENT.	:	

PLAINTIFF’S OPPOSITION TO MOTION TO SEAL

Defendants Yale University Police Department and Assistant Chief, Yale University Police Department (“YUPD”), moved to seal judicial documents, documents that are absolutely necessary for the Court to determine the outcome of this case. (Entry No. 115.00). While YUPD appears to take it for granted that documents submitted *in camera* to the FOIC must necessarily be sealed in an appeal, they cite not a single case on the matter.

If sealing such materials were practically automatic, as YUPD appears to presuppose, one would imagine scores of analogous cases they would have cited. It is not automatic. To the contrary, Conn. Gen. Stat. § 1-206(d) explicitly affords the Court the authority to “order the records to be sealed *or inspected* on such terms as the court deems fair and appropriate, during the appeal.”

The public docketing of the footage is supported by Connecticut’s presumption in favor of public access to the court and judicial records. *See* Practice Book § 11-20A(a)-(b)(“Except as otherwise provided by law, there shall be a presumption that documents filed with the court shall be available to the public.”); *see also Rosado v. Bridgeport Roman Catholic Diocesan Corp.*, 292 Conn. 1, 34 (2009)(“Connecticut follows the broader approach under which any document filed that a court reasonably may rely on in support of its adjudicatory function is a judicial document ... The vindication of this interest supports public access, not only to the proceedings themselves,

but to any materials upon which a court may rely in reaching a decision.”); *Doe v. Connecticut Bar Examining Committee*, 263 Conn. 39 (2003) (“The presumption of openness of court proceedings . . . is a fundamental principle of our judicial system.”).

Ms. Braasch and the public have a First Amendment right of access to the records. As set forth by binding Second Circuit precedent:

Where a document's "role in the performance of Article III duties" is "negligible . . . , the weight of the presumption is low." [*U.S. v. Amodeo*, 71, F.3d 1044, 1050 (2nd Cir. 1995)(“*Amodeo II*”)]. Conversely, where documents "directly affect an adjudication," *id.* at 1049, or are used to determine litigants' substantive legal rights, the presumption of access is at its zenith, *Lugosch [v. Pyramid Co.]*, 435 F.3d [110,] 121 [(2006)], and thus can be overcome only by "extraordinary circumstances," *Amodeo II*, 71 F.3d at 1048 (internal quotation marks omitted). The locus of the inquiry is, in essence, whether the document "is presented to the court to invoke its powers or affect its decisions." *Id.* at 1050.

Applying this standard, we have determined that a report submitted to a court in connection with a summary-judgment motion is entitled to a strong presumption of access. *Joy v. North*, 692 F.2d 880, 894 (2d Cir. 1982). Since such a document "is the basis for the adjudication, only the most compelling reasons can justify" sealing. *Id.* By contrast, documents "such as those passed between the parties in discovery" often play "no role in the performance of Article III functions" and so the presumption of access to these records is low. *Amodeo II*, 71 F.3d at 1050.

Bernstein v. Bernstein Litowitz Berger & Grossmann LLP, 814 F.3d 132, 142 (2d Cir. 2016). Here, the Court’s adjudicative duties are akin to Federal Article III duties. The documents at issue were presented to the Court to affect its decision, and the presumption of access is at its zenith.

YUPD offers no “extraordinary circumstances” to overcome this presumption. The statute grants the Court discretion to either seal documents reviewed *in camera* by the FOIC or make them available for full inspection. Thus, the mere fact that they were reviewed *in camera* by the FOIC is not extraordinary when the legislature specifically contemplated otherwise.

There is nothing about these particular documents that presents an extraordinary circumstance. The record shows Ms. Braasch was presented an opportunity to review them herself

by the YUPD. The record shows that non-party Yale University private officials were afforded the opportunity to review them. YUPD gave the videos to their outside counsel. As at least three types of members of the public have been already allowed to see them and relay their contents to the public at large, there are no case-specific circumstances that would warrant the Clerk of this Court sealing them.

Notably, the video is solely of Ms. Braasch and the police. Had Ms. Braasch had the foresight to operate her own camera at the time, she would be in possession of substantially identical footage already that she could freely release. That the interaction was recorded by YUPD rather than Ms. Braasch is not an extraordinary circumstance that overrides the presumption of public access.

At a minimum, however, counsel for Plaintiff should be granted access and the matter continued so that arguments may further be developed. As set forth in *Chief, Police Dep't v. Freedom of Info. Comm'n*, Nos. CV020514313S, CV020514314S, CV020514219S, CV020514220S, 2002 Conn. Super. LEXIS 2057, at *2-6 (Super. Ct. June 11, 2002), there are three “principal considerations” that warrant disclosure to counsel. First, access will assist Ms. Braasch in prosecuting this appeal, overcoming the “difficult position of having to argue that records are not exempt under FOIA without having seen the records” and “help level the playing field.” *Id.* at *3. Second, it will “assist the court in deciding this case”, to avoid the voluminous requirement of the Court having to review the entirety itself, “sharpen the arguments” and potentially eliminate argument over some of the documents. *Id.* at * 3-4. Third, whatever interests are at stake in maintaining confidentiality will not be compromised—outside counsel has had access, the hearing officer and staff counsel have had access, Yale administration have had access,

and even Ms. Braasch was allowed access; no harm would come were they disclosed to Plaintiff's counsel. *Id.* at *5. Thus, the documents should not be sealed from Plaintiff's counsel.

However, while access to Plaintiff's counsel will preserve the integrity of the process, that alone does not vindicate the important First Amendment rights at stake. The public has the right to know exactly what Ms. Braasch actually said about Lolade Siyonbola that night, and while there may be cases in which documents that were reviewed *in camera* should be sealed during an appeal, there are no extraordinary circumstances as to why these documents, in this case, should be.

WHEREFORE Plaintiff respectfully requests the motion to seal be denied.

Dated at Hartford, Connecticut, this 19th day of September, 2021.

Respectfully submitted,

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CERTIFICATION OF SERVICE

I hereby certify that a copy of the above was mailed or electronically delivered on this 19th day of September, 2021 to all counsel and pro se parties of record and that written consent for electronic delivery was received from all counsel and pro se parties of record who were electronically served including:

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